

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ is pleased to submit its comments in response to the Federal Communications Commission's (Commission) above-referenced Public Notice (*Notice*).² In its *Notice*, the Commission seeks comment on the proposed carrier contribution factor and funding requirement for the Interstate Telecommunications Relay Service (TRS) Fund submitted by Rolka Loube Saltzer Associates ("RLSA" or "Administrator"), as well as the proposed compensation rates, for the period of July 1, 2013 through June 30, 2014.

USTelecom and its members have a long history of supporting communications access for people with disabilities that reaches back to the very foundations of our industry. In addition to participating in the establishment and deployment of TRS, many of our members provide specialized offerings to members of the disability community, including free directory

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See, Public Notice, *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2013 Through June 2014 Fund Year*, DA 13-1137 (May 17, 2013) (*Notice*).

assistance, operator assistance or text- and data-only plans, so that people who are deaf or have hearing loss will not pay for voice communications services they are unable to use.³

USTelecom shares the Commission's concern that a "recent and dramatic spike" in reimbursement requests to the Interstate TRS Fund is of such a "sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed."⁴ In light of this unprecedented growth, the Commission adopted an Order that implemented emergency mechanisms to throttle the dramatic and unsustainable growth in the IP CTS Fund (*IP CTS Order*).⁵

The interim corrective measures adopted by the Commission in its *IP CTS Order* should help control the size of the TRS Fund, particularly if they are adopted (as they should be) on a permanent basis. However, the RLSA's proposed funding projections for the period of July 1, 2013, through June 30, 2014, do not take the Commission's corrective actions into account – and instead propose another massive new increase in fund size that will cause a corresponding spike in consumer prices. USTelecom urges the Commission to reject the RLSA proposal and adopt the more reasonable and accurate fund estimate proposed by industry (Industry Projection). Adopting this more discerning projection will help to appropriately forecast the fund growth that, if unchecked, threatens the program, ensuring the increased availability of IP CTS services to the

³ See, Testimony of Walter B. McCormick, Jr., President and CEO, United States Telecom Association before the House Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet, *The Twenty-First Century Communications and Video Accessibility Act of 2009*, June 10, 2010.

⁴ See, Order and Notice of Proposed Rulemaking, *In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service*, FCC 13-13, 78 Fed. Reg. 8030, ¶1 (February 5, 2013) (*IP CTS Order*).

⁵ *Id.* In its *IP CTS Order*, the Commission has proposed permanent implementation of its corrective measures and USTelecom filed comments in support of this proposal. See, USTelecom Comments, CG Docket Nos. 13-24, 03-123 (submitted February 26, 2013) (*USTelecom Comments*).

disability community, while also protecting consumers from unnecessary and substantial cost increases in their communications services. In addition, the Commission should expedite the timeframe for adopting TRS Fund requirements and related factors so that the process aligns more appropriately with the timeline for submitting annual price cap filings which are directly impacted by the TRS carrier contributions factor.

I. THE RLSA PROJECTIONS FOR THE IP CTS FUND ARE TOO HIGH AND WOULD HARM CONSUMERS.

A. The Commission Should Adopt the Industry Projection, Not the RLSA Projection.

The Commission's fund projection for the TRS, including the IP CTS, relies upon the TRS funding requirement submitted by RLSA (*RLSA Rate Filing*).⁶ The *RLSA Rate Filing* notes the Industry Projection for IP CTS for the upcoming funding year of 181,429,401 minutes.⁷ RLSA, however, rejected the Industry Projection and instead presents three alternative IP CTS demand scenarios, each of which relies on historical IP CTS growth trends – rather than taking into account the Commission's IP CTS Order – and each of which is significantly in excess of the Industry Projection.

RLSA's proposed alternatives are 290,319,247 minutes (Option 1), 409,268,995 minutes (Option 2), and in excess of 825,000,000 minutes (Option 3).⁸ RLSA concluded that Option 2 is the appropriate projection of demand for the 2013-14 funding year,⁹ and it is this funding projection which RLSA proposes the Commission to implement. But this projection appears

⁶ See, Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, (filed May 1, 2013) (*RLSA Rate Filing*).

⁷ *Id.*, p. 24.

⁸ *Id.*, pp. 26 – 27.

⁹ *Id.*, p. 28.

significantly overstated and would increase the IP CTS fund requirements by nearly 500 percent and the total fund requirements for all services would more than double as compared to FY 2012-2013 projections.¹⁰ Accordingly, the Commission should implement the Industry Projection instead.

B. The Industry Projection is Consistent with Commission Action.

Both industry and consumer groups are on record in this proceeding as suggesting that the IP CTS demand forecast is overstated. For example, Sorenson Communications, Inc., (Sorenson) stated that even RLSA's most conservative projection – Option 1 – “significantly overstates demand.”¹¹ Sorenson acknowledges that the measures implemented in the *IP CTS Order* have “already caused substantial reductions in the growth” of IP CTS subscriptions¹² – reductions that RLSA's various options largely dismiss. Similarly, a coalition of consumer disability groups recently met with the Commission and expressed their shared view that RLSA's demand and budget figures “seem high.”¹³ In fact, even the RLSA acknowledges that it “does not expect that any of the above demand projections will produce an accurate reflection of demand during the 2013-2014 funding year.”¹⁴

¹⁰ The Commission's proposed fund projection forecasts a fund size and a contribution factor that approach an increase of almost 300% compared to the preceding funding period. Specifically, the Commission's rate projection of \$1.7877 for CTS and IP CTS relies on Option 2's projection of 409,268,995 minutes. USTelecom combined the actual reported data for July, 2012 through March 2013, with the industry average growth for the period April 2013 through June 2013. *See, RLSA Rate Filing*, Exhibit 1-4. The resulting figure is 112,355,136 minutes, which equates to a 264% increase in projected minutes when compared with Option 2.

¹¹ Ex Parte Notice, Sorenson Communications, p. 3 CG Docket Nos. 13-24 and 03-123 (filed May 10, 2013) (*Sorenson Ex Parte*).

¹² *Id.*, p. 3.

¹³ *See*, Ex Parte Notice, Telecommunications for the Deaf and Hard of Hearing, Inc.; Deaf and Hard of Hearing Consumer Action Network; National Association of the Deaf; and Hearing Loss Association of America, p. 2, CG Docket Nos. 13-24 and 03-123 (filed May 13, 2013).

¹⁴ *RLSA Rate Filing*, p. 28.

Though the Commission has acknowledged that the IP CTS has been “experiencing *unprecedented and unusually rapid growth*,”¹⁵ it makes little sense for it to adopt a funding projection which assumes that this “unprecedented and unusual” growth will continue unabated throughout the 2013-2014 funding year. Such an assumption ignores the impact of its emergency preventive measures implemented to address what it believes is causing “a *substantial* portion of this growth.”¹⁶ It would be unreasonable for the Commission to impose a nearly 500 percent IP CTS funding increase given that the Administrator believes that the Commission’s interim rules will “dampen the continued rapid increase in IP CTS demand.”¹⁷

Moreover, RLSA in supporting Option 2 unreasonably ignores the substantial impact that the Commission’s corrective measures should have on the growth of the IP CTS Fund. Considering IP CTS is expected to experience 152 percent growth in demand during the 2012 – 2013 funding cycle – growth experienced almost entirely without the benefit of the Commission’s corrective measures – the RLSA inexplicably projects an even *larger* growth in demand of nearly 300 percent for the upcoming year. In fact, RLSA states that it would have proposed Option 2 even “[a]bsent adoption” of the Commission’s corrective measures.¹⁸ In other words, RLSA completely dismisses the likely impact of the Commission’s protective measures adopted in its *IP CTS Order* – measures that the Commission itself believes will “better control the level of TRS disbursements” while protecting the “programmatic, legal, and financial integrity of the TRS program.”¹⁹

¹⁵ *IP CTS Order*, ¶ 3 (emphasis added).

¹⁶ *Id.*, ¶ 8 (emphasis added).

¹⁷ *RLSA Rate Filing*, p. 25.

¹⁸ *Id.*, p. 28.

¹⁹ *IP CTS Order*, ¶ 8,

Indeed, RLSA repeatedly contradicts itself throughout the RLSA Rate Filing. On the one hand, RLSA acknowledges the “significant” impact on the IP CTS fund of the detrimental marketing activities that led to the Commission’s *IP CTS Order*.²⁰ Despite this significant impact, it inexplicably proposes to utilize Option 2 while acknowledging that the underlying data relies upon the “historical growth pattern of each of the individual service providers”²¹ for the period since January 2011 – the very period during which these dubious industry activities occurred. In fact, the Commission’s *IP CTS Order* traces the spike in growth beginning in July 2012,²² meaning that the RLSA’s Option 2 projection includes almost a full year of questionable data. Despite its inclusion of this flawed data, the RLSA then concludes that *none* of its three projections “will produce an accurate reflection of demand during the 2013-2014 funding year.”²³

As reflected in the chart below, the RLSA’s Option 2 clearly does not reflect the dampening effect that the Commission’s corrective measures will have in controlling TRS Fund growth. The chart reflects the comparison between the Commission’s proposed Option 2 (409 million minutes), the Industry Projection (181 million minutes) and RSLA’s alternative Option 1 (290 million minutes). In addition, the blue line showing 149 million minutes reflects a regression analysis which assumes that the growth rate experienced between Jan 2011 through March 2013 will continue into next year. As demonstrated below, the Industry Projection acknowledges fund growth by substantially increasing the size of the fund. In stark contrast,

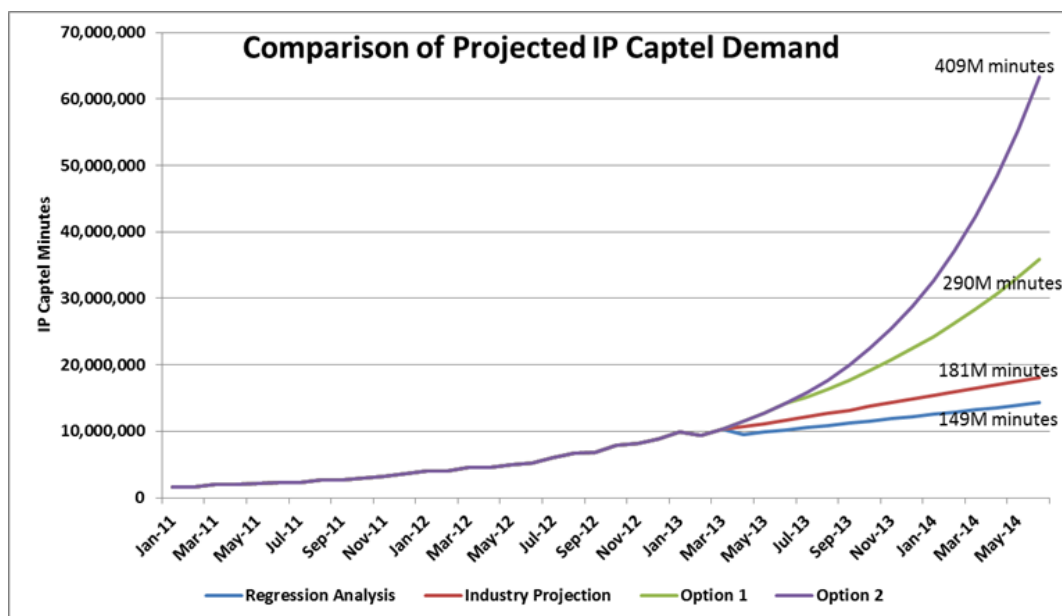
²⁰ *RLSA Rate Filing*, p. 25.

²¹ *Id.*, p. 26.

²² *IP CTS Order*, ¶ 6.

²³ *RLSA Rate Filing*, p. 28.

Option 2 reflects unprecedented growth that clearly fails to account for the dampening effect of any of the Commission’s corrective measures.



USTelecom therefore recommends that the Commission rely on the Industry Projection for its June 2013 – July 2014 projection. The Industry Projection provides a substantial cushion to ensure the integrity of the fund through the July 2013 – June 2014 funding period, while also ensuring that the disability community has access critical IP CTS services. The Industry Projection strikes an appropriate balance given the providers of the service are closest to the demands for the service, and, since the projections were submitted to RLSA prior to implementation of the Commission’s corrective measures, they may afford additional funding protections.²⁴

²⁴ Indeed, the RLSA already includes an approximate \$120 million reserve for the TRS Fund. See, *RLSA Rate Filing*, Exhibit 2 (identifying a “Single month provider Payment Reserve” of \$119,561,049).

C. The Industry Projection Accounts for Substantial Growth in the IP CTS Fund and is in the Public Interest.

With ongoing open proceedings that could materially impact the size of the fund, the Commission should err on the side of consumer protection and adopt more conservative fund estimates. USTelecom recommends that the Commission adopt the Industry Projection, which assumes a reasonable 69 percent year-over-year growth; a projection that would substantially increase the size of the current fund. The record in this proceeding already includes support for the Industry Projection. Sorenson stated that the Industry Projection “is more likely to be accurate than any of RLSA’s projections, and, as it was derived before the IP CTS order’s effects were felt, may itself overstate demand.”²⁵ In fact, Sorenson acknowledges that the Commission’s single action of requiring captions-off for IP CTS-enabled phones has “significantly reduced IP CTS minutes of use,” and that the Commission’s broader interim measures “has already caused substantial reductions in the growth” of Sorenson’s IP CTS subscriber base.²⁶

Adopting the Industry Projection is in the public interest since it acknowledges the Commission’s recent corrective measures, sufficiently accounts for the rapid growth in IP CTS funding by nearly doubling the fund size and – since every consumer of telephone service ultimately pays for the TRS Fund – avoids imposing substantial and unnecessary costs. In contrast, Option 2 simply ignores the Commission’s corrective measures, and unnecessarily inflates the size of the fund.

The unique and sudden nature of the growth in IP CTS, coupled with the Commission’s recent corrective measures, warrant a more conservative approach as outlined above, as opposed

²⁵ *Sorenson Ex Parte*, p. 3.

²⁶ *Id.*

to the dramatic overreaction in projected funding embodied in Option 2. The difference in costs reflected in these various options is not insubstantial. The use of Option 1 instead of Option 2 represents approximately \$200 million, while the differential between the Industry Projection and Option 2 is approximately \$400 million. USTelecom fully supports the financial integrity of the TRS Fund; however, the Commission must be cognizant of the fact that absent the adoption of more reasonable projections, significant and unnecessary costs will be borne by consumers.

D. The Risk of Over-Assessment is Much Greater than the Threat of Under-Assessment.

Any Commission concerns that the Industry Projection could fall short of actual fund requirements could be addressed through a one-time reassessment of the fund in six months (*i.e.*, in November, 2013). Indeed, RLSA states that it plans to continually monitor the demand projections for each of the services, including IP CTS, throughout the 2013-2014 funding year, and will update the Commission on a quarterly basis.²⁷ On the other hand, adoption of Option 2 and overstatement could unnecessarily discourage use of communications services and harm consumers.

II. THE COMMISSION SHOULD PERMANENTLY ADOPT ITS INTERIM RULES ADOPTED TO ENSURE ONLY ELIGIBLE CONSUMERS USE IP CTS.

There is strong support for the Commission to permanently adopt its interim rules to ensure that only eligible consumers use IP CTS.²⁸ As noted in the Commission's related notice, the growth in outlays for the IP CTS is placing *all* forms of TRS funding in jeopardy, and "absent Commission action, there could be insufficient funds available in this Fund year to meet

²⁷ *RLSA Rate Filing*, p. 29.

²⁸ *See e.g.*, Comments of Sprint Nextel Corporation, CG Docket Nos. 13-24, 03-123 (filed Feb. 26, 2013); Comments of CTIA-The Wireless Association®, CG Docket Nos. 13-24, 03-123 (filed Feb. 26, 2013); Comments of the National Association of State Relay Administration, CG Docket Nos. 13-24, 03-123 (filed Feb. 26, 2013).

the needs of the Fund, potentially triggering a violation of the Anti-Deficiency Act and otherwise threatening the availability of the service for consumers of this and other relay services supported by the Fund.”²⁹

The fact that the proposed IP CTS fund requirements are increasing by 500 percent and the total fund requirements are doubling does not bode well for the programmatic, legal, and financial integrity of the TRS program if its tremendous growth remains unchecked. This problem will be further exacerbated by the fact that the underlying industry revenue upon which the TRS collection factor is based continues to decline.

The Commission’s interim rules, designed to address this tremendous growth, are reasonable, narrowly tailored and critical to ensuring the continued integrity and sustainability of TRS to the disability community and should be permanently adopted. USTelecom filed comments supporting permanent adoption of the Commission’s interim rules.³⁰ Among other things, the interim rules include a requirement for certification of IP CTS users and a proposal to permanently prohibit referral fees.³¹ Similar to the proposed certification process, a ban on referral fees is simply another way for the Commission to ensure that only qualified users benefit from the provision of the IP CTS. USTelecom also agrees with the Commission’s proposal to prohibit all provider programs that give away or loan equipment to potential or existing IP CTS users at no cost or at de minimis cost.³² The Commission correctly notes that because such

²⁹ *IP CTS Order*, ¶ 7.

³⁰ *See generally, USTelecom Comments.*

³¹ *IP CTS Order*, ¶¶ 13 – 18 (discussing interim rules regarding referrals for rewards programs); ¶¶ 19 – 26 (discussing interim rules regarding registration and certification requirements).

³² *Id.*, ¶¶ 40 – 41.

devices are modern, attractive, and often provide enhanced sound amplification, they are “likely to entice consumers with or without hearing loss to seek their acquisition.”³³

The tremendous growth rate of the fund should spur the Commission to carefully and thoughtfully examine all aspects of its operation to maximize its efficiency and effectiveness. The Commission could consider a more thorough examination of the rate methodology used for the TRS Fund by more closely examining how best to make fiscally responsible decisions for future service rate determinations and projected minutes.

At a minimum, the Commission should permanently adopt its proposed interim rules. The proposed rules strike an appropriate balance between ensuring the continued availability of the IP CTS, and represent reasonable measures to ensure the programmatic, legal, and financial integrity of the TRS Fund.

III. THE COMMISSION SHOULD ALTER THE TIMELINE FOR ADOPTING TRS RATES, FUND SIZE, AND CONTRIBUTION FACTOR.

The Commission should consider accelerating the timeline for the adoption of the TRS reimbursement rates, funding requirements, and contribution factor. All carriers that provide interstate telecommunications services must contribute to the TRS fund on the basis of interstate end user telecommunications revenues. Carriers often recover TRS contributions through their rates established through price cap filings. This process is complicated for carriers and the FCC staff when the proposed TRS contribution rates are not settled and estimates vary widely as is the case this year. The Commission’s annual access tariff filings are due every year in mid-June while the TRS contribution requirements are usually not adopted until very close to July 1st each year. Accordingly, the Commission should adjust the process to adopt the TRS contribution

³³ *Id.*, ¶ 40.


factor well in advance of the annual access filing period. The effective date for the TRS rates and contribution factor could remain July 1st as long as the adoption process is prior to mid-June. This action would make the process more efficient for the carriers and the Commission.

IV. CONCLUSION

The Commission should implement the Industry Projection for the 2013-14 funding year for the IP CTS Fund. There is broad support for Industry Projection from both industry and members of the disability community since it acknowledges the Commission's recent corrective measures, sufficiently accounts for the rapid growth in IP CTS funding by substantially increasing the size of the fund, and avoids imposing substantial and unnecessary costs. The Commission should also permanently adopt its interim rules to ensure that only eligible consumers use IP CTS, as well as consider other possible measures to eliminate fraud, abuse and misuse of the Fund.

Respectfully submitted,

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